HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 910 OF 2005

Jean Vinay Kalgutkar & Anr. ..Appellants.

Versus.

Jennifer Saeed Mirza & Ors. ..Respondents.

Shri. Vicky Mohan Singh i/b Mahimtura & Company for the Appellants.

Shri. Y. S. Jahagirdar with Shri. Anil Singh & Shri. D. R. Shah for the respondents.

CORAM: DR.D.Y. CHANDRACHUD J.

DATE : DECEMBER 6, 2005.

P.C.

1. In view of the finding in paragraph 21 of the impugned order of the City Civil Court, no interference is warranted. The finding of fact, though prima facie at the interim stage, is that there is no independent staircase for the use of the 2nd & 3rd floors and the only stair case is the disputed stair case. The issue as to whether the plaintiffs alone have exclusive right or they have joint interest in the stair case can only be decided in the trial.

2. While dismissing this appeal from order all the rights and contentions of the parties are kept open on merits. Learned trial Judge shall decide the issues

which are arising in the suit uninfluenced by the observations in the present proceedings.

3. On behalf of the Fourth Respondent it has been stated that without prejudice to the rights and contentions of the Fourth respondent in the suit including inter-alia in respect of the terrace, as a working arrangement, the fourth respondent shall not use the stair case for seeking access through the flat of the appellants for access to the terrace on the southern wing. It is, however, clarified that this statement shall operate in respect of the appellants personally so long as the appellants continue to be in possession and ownership of the flat in the northern wing.

4. On behalf of the appellants it has been stated that the appellants shall not similarly obstruct the construction activities which are being undertaken by the fourth respondent on the south wing for an access to the terrace.

5. The trial of the suit is expedited. Learned trial Judge shall make an endeavour to dispose of the suit as expeditiously as possible.

(DR. D.Y. CHANDRACHUD J.)